

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 207 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

JAYESHKUMAR RATANSHI MIRANI

Versus

MAHENDRA KHODABHAI RATHOAD

Appearance:

MR A.M. PAREKH FOR MR HN JHALA for Petitioner

MS BANNA S DUTTA for Respondent No. 1

MR. S.P. DAVE, A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/02/98

ORAL JUDGEMENT

Appellant herein will be referred to as the complainant and the respondent no. 1 will be referred to as the accused.

2. The complainant has brought under challenge the judgment and order dated 27th July, 1982 passed by the learned J.M.F.C., Vankaner in Criminal Case No. 156 of 1982 whereby the learned Magistrate acquitted all the three accused persons of the offence punishable u/s 323-504-506(2)-114 of the I.P. Code giving them the benefit of doubt.

3. The prosecution case is that the complainant being a graduate was appointed by the S.S.C. Examination Board to supervise S.S.C. Examination held in March, 1982 at Sir Amarsinhji High School. The accused was appearing in the aforesaid new S.S.C. Examination. It so happened that on 3rd April, 1982 when the complainant was supervising relevant examination paper during the period 2-50 to 5-00 in the afternoon the accused was frequently talking with the other student in the examination hall. On the complainant telling the accused not to do so, he gave abuses to the complainant and administered threat of life. When the complainant was returning from the school after the examination was over on that day, the accused in the company of other two persons named in the complaint assaulted the complainant and gave him beating and threatened him to kill him. The complainant, therefore, lodged his complaint before the police on the same day. But since the police did not take any action he was required to file the complaint before the Court on 15th May, 1982 and further statement of the accused came to be recorded and after the arguments were heard the learned Magistrate recorded acquittal of all the accused persons. The complainant has challenged the same with the leave of this Court in this appeal.

4. I have heard learned advocate for the complainant who died during the pendency of this appeal, learned advocate who is appointed as amicus curie for the accused and Mr. S.P. Dave, learned A.P.P. for the respondent no. 2 - State.

5. The complaint lodged by the complainant and the evidence of the witnesses recorded before the learned Magistrate have been read before this Court also. In fact, the complaint exh . 20 does not indicate any incident with regard to the accused having abused the complainant or having given threat of life to him during the period of examination between 3-00 to 500 p.m. in the afternoon on 3rd April, 1982. The complaint does not speak about complainant having scolded the accused who was found to be indulging into copying. The complaint also does not speak about the accused and other persons

having administered any threat of life to the complainant during the course of the incident which is alleged to have taken place when the complainant was proceeding home after the examination was over.

6. In the back ground of the allegations appearing in the complaint the learned Magistrate appears to have appreciated the evidence adduced on behalf of the complainant. It is the fact that none of the students has been examined before the learned Magistrate. It is also the fact that none of the witnesses from the shops and properties occupied by the persons nearby the road on which the second incident is alleged to have taken place, has examined. Bearing in mind this salient feature of the prosecution case, the learned Magistrate has evaluated the second incident and on the appreciation of the evidence he has come to the conclusion that it was not established beyond reasonable doubt that the accused persons were the aggressors on the complainant in exchange of hands between two sides. I have gone through the evidence adduced before the learned Magistrate. I am not in a position to find any circumstance which would go to show that the accused was aggressor. There is no medical evidence to show that the complainant had sustained any injury during the course of fight between the two parties. Thus, in the absence of reliable evidence as to who was the aggressor during the course of the second incident when both the parties had exchange of hands it was obvious that the accused could not be held guilty of the offence charged against them. In my opinion, the learned Magistrate has rightly given the benefit of doubt to the accused.

7. In view of what is stated above, in the facts of the case, this appeal deserves to be dismissed and order accordingly.